

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.8961 of 2007
Date of decision: 4.10.2007

Army Institute of Higher Education

-----Petitioner

Vs.

State of Punjab and others

-----Respondents

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA**

Present: Mr. Ashok Aggarwal, Sr. Advocate
with Mr. Vishal Aggarwal, Advocate for the petitioner.

Mr. Suvir Sehgal, Addl.A.G. Punjab.

JUDGMENT:

This petition seeks quashing of notifications dated 13.4.2006 and 7.5.2007, Annexures P.4 and P.8 respectively, on the question of filling up of B.Ed seats by way of Centralised Counselling to be conducted by the University, authorised by the State of Punjab.

Case of the petitioner is that it has been set up by the Army Welfare Education Society (AWES) registered under the Societies Registration Act, 1860. It is running B.Ed colleges in accordance with the provisions of National Council for Teachers Education Act, 1993 (NCTE Act). Recognition has been duly

granted by the National Council for Teachers Education (NCTE) vide letter dated 1.7.2005, Annexure P.1. Affiliation has also been granted by the University, respondent No.3 vide letter dated 19.7.2005, Annexure P.2. The State of Punjab has given NOC vide letter dated 20.12.2004, Annexure P.3. Till the session 2006-07, the petitioner-Institute was following its own procedure for admission as per rules of the AWES. All the three B.Ed Colleges set up by the AWES are meant exclusively for wards/dependants of Army Personnel serving or retired including widows and all the seats are reserved for the said category. In the year 2006, the State of Punjab issued impugned notification dated 13.4.2006 reserving 15% of the seats for the residents of Punjab through Centralised Counselling to be conducted by the University, authorised by the Punjab Government. The said notification was modified vide notification dated 24.5.2006 requiring the petitioner-Institute to give undertaking to abide by the terms and conditions laid down by the Punjab Government for giving NOC. The petitioner represented but the State Government issued impugned notification dated 7.5.2007.

Case of the petitioner further is that B.Ed College run by the petitioner is exclusively for wards/dependants of Army personnel and Punjab residents could not be admitted through Centralised Counselling by the State of Punjab. The impugned

notifications are violative of fundamental right of the petitioner under Article 19(1)(g) of the Constitution.

On 31.7.2007, following order was passed:-

“Learned counsel for the State, on being asked, seeks time to study the legal position whether it is permissible for any institution to confine admissions to wards of any particular category in the light of law laid down by the Hon'ble Supreme Court in **P.A.Inamdar and others v. State of Maharashtra and others**, AIR 2005 SC 3226, laying down that all admissions to higher educational institutions have to be confined to merit, open to all eligible candidates, subject to constitutionally permissible reservations.

Adjourned to 6.8.2007.”

In the affidavit dated 24.8.2007 filed on behalf of the State of Punjab, it has been stated that professional education has to be made available to all eligible students on a uniform basis.

We have heard learned counsel for the parties and perused the record.

The question to be considered is whether any institution can claim 100% reservation for a class of candidates to the exclusion of other eligible students irrespective of merit.

Learned counsel for the petitioner submitted that an unaided institution has exclusive right to define eligibility of

candidates who could seek admission and there is no requirement that all eligible candidates must be allowed to compete on merit. Reliance has been placed on judgments of the Hon'ble Supreme Court in **PA Inamdar** (supra), Paras 40 to 42, 121 to 124, 127, 130 to 135, 143 and in **Secy.Malankara Syrian Catholic College v. T.Jose and others**, (2007) 1 SCC 386. It was also submitted that the State could not appropriate any quota out of admission seats.

We do not find any merit in the contention raised that an unaided recognized institution has exclusive right to define eligibility of candidates to whom admissions could be confined irrespective of merit. The issue stands decided in no uncertain terms by the Hon'ble Supreme Court.

The paras in the judgment of the Hon'ble Supreme Court in **P.A.Inamdar v. State of Maharashtra**, AIR 2005 SC 3226, referred to at the time of hearing, are reproduced below for ready reference:-

“40.On behalf of unaided private professional colleges, learned counsel further submitted that there are many private educational institutes which have been set up by people belonging to a region or a community or a class in order to promote their own groups. As long as these groups form an unaided minority institution, they are entitled to have transparent criteria to admit students belonging to their group. For instance, scheduled castes and scheduled tribes have started Ambedkar Medical College; Lingayaths have

started KLE Medical College in Belgaun and people belonging to Vokalliga community have started Kempegowda Medical College. Similarly, Edava community in Kerala has started its own colleges. Sugar co-operatives in Maharashtra have started their own colleges. Learned counsel also highlighted an instance of a college opened in Tamil Nadu by State Transport Workers for the education of their children on the engineering side. He submitted that if the State is allowed to interfere in the admission procedure in these private institutions set up with the object of providing educational facilities to their own group, community or poorer sections, the very purpose and object of setting up a private medical college by a group or community for their own people would be defeated.

41. According to learned counsel, the State control in unaided private professional colleges can only be to the extent of monitoring or overseeing its working so that they do not indulge in profiteering by charging capitation fees and sacrifice merit. According to the learned counsel, in the directions contained in Islamic Academy, the main ratio of Pai Foundation that the unaided institutions should have autonomy in the matter of admission and fees structure has been totally forgotten. The learned counsel raised very serious objections to the manner in which the various permanent committees set up in several States on the directions of Islamic Academy are conducting themselves and forcing their decisions on private institutions. The proposed fee structure is

required to be placed before the Committee in advance of the academic year by the institute. It is the Committee which has to decide whether the fees proposed by the institute are justified and do not amount to profiteering or charging of capitation fees. The Committee has been given liberty to approve the fee structure of the institute or to propose a different fee structure. The fee fixed by the Committee is binding for a period of three years and at the end of the said period the institute would be at liberty to apply for revision. Learned counsel gave in writing certain illustrations of decisions of the Fee Committee in few unaided colleges in the State of Karnataka and pointed out that without proper financial expertise and without studying the relevant documents and accounts, the Committee determined the fee structure by only taking into account the affordability of the parents of the students with no regard whatsoever to the viability of the institute on the basis of finances so generated. It is argued as to why private professional institutes should not be allowed to modernize its facilities and provide better professional education than government institutes. It is pointed out that in the case of non-minority unaided M.S. Ramaiaya Medical College, Bangalore, the Fee Committee initially fixed annual fee at Rs.2.55 lacs for MBBS course as against the justification shown by the institute for demanding Rs. 3.90 lacs. The decision of the

Fee Committee led to the filing of writ petition by the institute in the High Court of Karnataka and agitation and demonstrations by the students' union. The Committee under the pressure of the student community reduced the annual fee to Rs.1.6 lacs which was re-affirmed after the High Court directed that the management of the unaided college should be heard before reducing the annual fee.

42. Thus the learned counsel on behalf of the Karnataka Private Medical College Association questioned the correctness of the directions of the Bench in Islamic Academy. It is submitted that as decided in *Pai Foundation* by a larger Bench, the essence of private educational institutions is the autonomy that the institution must have in its management and administration. The 'right to establish and administer' particularly comprises the right a) to admit students and b) to set up reasonable fee structure. The autonomy of the institution, therefore, predicates that all seats would be filled by the management and there can be no reservations or quotas in favour of the State. In *Pai Foundation*, the only observations made were that some colleges may be required to admit a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships. It is conceded that autonomy of a private educational institution to admit students of its choice does not mean that

there can be no insistence on transparency in the admission procedure and on merit being the criterion for admission. It is submitted that autonomy of a private educational institution could mean that they can, according to the objects and purposes of their institutions, give preference to a particular class or group of students like SC/ST in Ambedkar Medical College, students from backward area in Bijapur college and transport employees' children in Madras State Corporation Employees' College or the children of employees of Larson and Turbo Company in a college established by that company. The right to charge fees so as to run the college and to generate sufficient funds for its betterment and growth cannot be controlled by the State. That would seriously encroach upon the autonomy of the private unaided institution. It is submitted, by quoting Dr. S. Radhakrishnan, the then Chairman of the University Education Commission, that interests of democracy lie with the resistance of the trend towards governmental domination of the educational process. In conclusion, learned counsel representing Association of private unaided colleges in Karnataka submits that the decision in Islamic Academy and the directions made therein go far beyond the law laid down by the larger Bench in Pai Foundation. The Bench in Islamic Academy virtually reviewed the larger Bench decision in Pai Foundation in guise of implementation of the said decision and on the

basis of later developments. In Islamic Academy, the Bench accepted that there could be no rigid fee structure fixed by the government for private institutions. An institute should have the freedom to fix its own fee structure for day-to-day running of the institute and to generate funds for its further growth. Only capitation and diversion of profits and surplus of the institute to any other business or enterprise was prohibited. It is submitted that Islamic Academy contrary to the legal position explained in *Pai Foundation*, could not set up in each State permanent committees headed by retired High Court Judges with the power to decide on the justification of the fee proposed by the institute and propose any other fees. It could also not make the fee fixed by the Committee binding for a period of three years. Learned counsel submits that once the college infrastructure and hospital facilities attached to the medical college have been approved by the Medical Council of India in accordance with its regulations, the total expenses of college and hospital could be taken into account by the institute to decide upon its own fee structure. Learned counsel, in criticizing the directions in *Islamic Academy*, submitted that although the scheme formulated in *Unni Krishnan* has been expressly overruled in *Pai Foundation* on the ground that it virtually nationalized education and resulted in surrendering total process of selection to the State, the Bench in *Islamic Academy's* case,

in an attempt to take up preventive measures to ensure merit and check profiteering in private unaided professional institutions, cannot re-introduce quota system for the management and the State and thus infringe upon the autonomy of the institute. Such an attempt, learned counsel contends, would be unconstitutional and violative of Article 19(1)(g) of the Constitution in the case of non-minority unaided institutions and also violative of Article 30 in the case of minority unaided professional institutions. Learned counsel argued that constitutionally, as held in *Pai Foundation*, it is not permissible for the State to impose a Government quota, its own reservation policy, a lower scale of fees etc. on a private unaided non- minority and unaided minority professional institutions, only by taking into consideration the interests of students. In the State of Karnataka for the academic year 2004-2005, by illustration, it is shown that 75% of the intake capacity is the Government quota in which are included 5% quota for sports, defence and NCC; 50% quota for Scheduled Castes/Economically backward classes/Scheduled Tribes/OBC, there is total 55% reservation quota in 75% of the government quota. The remaining 25% quota left for the management is also to be taken over by the Government insisting on admitting students from the select list prepared on the common entrance test conducted by the State.

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106. To establish an educational institution is a Fundamental Right. Several educational institutions have come up. In Kerala Education Bill, 'minority educational institutions' came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30 (1) can "exercise that right to their hearts' content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition. This Court clarified in Kerala Education Bill that 'the right to establish

and administer educational institutions' conferred by Article 30(1) does not include the right to maladminister, and that is very obvious. Merely because an educational institution belongs to minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30 (1) on the minority to establish and administer educational institutions. Dealing with the third category of institutions, which seek only recognition but not aid, their Lordships held that 'the right to establish and administer educational institutions of their choice' must mean the right to establish real institutions which will effectively serve the needs of the community and scholars who resort to these educational institutions. The dividing line between how far the regulation would remain within the constitutional limits and

when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S. B. Sinha, J. in his opinion in Islamic Academy. The considerations for granting recognition to a minority educational institution and casting accompanying regulation would be similar as applicable to a non-minority institution subject to two overriding considerations: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.

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121. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except

merit.

122. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less

meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

123. The observations in paragraph 68 of the majority opinion in *Pai Foundation*, on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation*, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in *Pai Foundation*) in our considered opinion, observations in paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they

may frame their own policy to give free-ships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the state to cater to the educational needs of weaker and poorer sections of the society.

124. Nowhere in Pai Foundation, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

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127. For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows States to fix quota for seat sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy, in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation.

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Q.2. Admission procedure of unaided educational institutions.

130. So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere

therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

131. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

132. Pai Foundation has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a 'sprinkling' of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In minority educational

institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

133. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying

utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counselling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

134. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure there for subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the

abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

135. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

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143. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on

non-exploitative terms to all eligible students on an uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and on a reasonable fee-structure.”

The principles which clearly emerge from judgment of the Hon’ble Supreme Court in *P. A. Inamdar (supra)* are:-

- (i) Imparting higher education at Graduate level and above and in professional/technical education, constitutes a separate class. Recognition and affiliation are required for such education. Even a private unaided institution has to make merit based selection;

(Paras 110, 131, 134, 135, 143).

- (ii) Such education constitutes national wealth and State can arrange for holding a Common Entrance Test and successful candidates can be allotted to unaided institutions also. Common Entrance Test can also be held by the institutions themselves or in certain circumstances by individual institutions, if no such Common Entrance Test is being held by the State, but the selection has to be based on merit. Allotting of candidates to minority institutions depends on kind of minority. But even for this, inter se merit of the category of such students cannot be ignored;

(Paras 89, 131, 133-135, 143).

(iii) A private unaided institution cannot be required to share seats with the State for implementation of State policy on reservation on lesser percentage of marks i.e. on criteria other than merit; (Paras 121-127).

(iv) Committees dealing with admissions and fee structure, are not violation of Fundamental Rights under Article 19(1)(g) or Article 30(1) of the Constitution. (Para 133).

Contention of learned counsel for the petitioner that appropriation of quota by the State for enforcement of reservation policy was disapproved by the Hon'ble Supreme Court, is irrelevant for the issue involved in the petition. Disapproval of the appropriation of quota by the State for enforcement of reservation policy stands on different footing than requiring admissions to be made on merit open to all eligible students. Contention that eligibility could be determined only by the Institute by restricting it to a particular class cannot be accepted as the same will be against Article 14 and will also amount to 100% reservation. The observations in the judgment of the Hon'ble Supreme Court in **P.A.Inamdar** (supra), relied upon by the learned counsel for the petitioner, do not support the claim that the petitioner-Institute could restrict eligibility exclusively to a particular class.

The judgment in **T.Jose** (supra), relied upon by the learned counsel for the petitioner has no relevance to the issue

involved. Therein, a minority institution appointed Principal of its College, which was struck down by the University Appellate Tribunal being in violation of Section 57 of the University Act. The Hon'ble Supreme Court held that Section 57(3) of the Act did not apply to minority, in view of Article 30 of the Constitution. Learned counsel for the petitioner relied upon observations made in para 19 of the judgment to the effect that minorities had a right to admit eligible students of their choice. Though, we are not concerned with the issue of right of a minority institution, the judgment cannot be held to be laying down law contrary to the judgment of the Hon'ble Supreme Court in **PA Inamdar** (supra), wherein right of the State to make admissions by Centralised admissions open to all eligible students has been upheld, subject to certain exceptions, which are not relevant for the present case. It cannot be held that even minority institutions have total freedom to admit students of their choice in higher and professional/technical education irrespective of merits. We are of the view that judgment relied upon by the learned counsel for the petitioner in **T.Jose** (supra) does not advance the proposition put forward on behalf of the petitioner.

It is well-settled that unaided educational institution imparting higher education and enjoying affiliation and recognition from the State is subject of discipline of Article 14 of the

Constitution and cannot discriminate in the merit of a candidate on the ground that such a candidate did not belong to a particular category of the society. 100% reservation in such admissions in favour of any particular category is not permissible on the ground of source of funding or on the ground of autonomy of an institution.

In **Thapar Institute of Engineering and Technology v. State of Punjab and another**, AIR 1997 SC 793, the question was whether preferential treatment could be given to the wards of employees of the institute. Two percent of seats were shown to be reserved for the wards and employees of the Institute by the Trust. Similar reservation was made by the Technological Institute of Textile and Science which was not receiving any aid. (Para 3 of the judgment). Such a reservation was held to be violative of Article 14 of the Constitution. Upholding the view of the High Court, the Hon'ble Supreme Court observed:-

“6. In the context of admission to an institution imparting higher education in professional courses a question has often arisen whether the State can make provision giving preferential treatment to candidate seeking admission to the institution. In dealing with this question the approach of this Court has been that such preferential treatment must be consistent with the mandate of Article 14 of the Constitution guaranteeing equality of

opportunity and that though reasonable classification is permissible, such classification must have a reasonable nexus with object of the rules providing such admission, namely, to select the most meritorious amongst the candidates to have advantage of such education. Applying this test this Court has struck down, as violative of Article 14 of the Constitution, provision for allotment of seats in medical college in the State amongst the various districts in the State in the ratio of the population of each district to the total population of the State. (See: *Minor P. Rajendran v. State of Madras*, (1968) 2 SCR 786 : (AIR 1968 SC 1012). Similar provision for distribution of seats on unit basis was also struck down. (See : *A. Periakaruppan v. State of Tamil Nadu*, (1971) 2 SCR 430 : (AIR 1971 SC 2303). University-wise distribution of seats has, however, been upheld on the ground that the universities are set up for satisfying the educational needs of different areas where they are set up and those attached to such universities have their ambitions to have training in specialised subject like medicine satisfied through colleges attached to their own universities. (See : *D. N. Chanchala v. State of Mysore*, 1971 Supp SCR 608 : (AIR 1971 SC 1762)). It has been laid down that university-wise preferential treatment may be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense. (See : *Jagdish Saran v. Union of India*,

(1980) 2 SCR 831, at p. 849 : (AIR 1980 SC 820 at 830).

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15. The question whether reservation in the matter of admission is permissible for wards of employees of the institution was considered by this Court in Chairman/Director, Combined Entrance Examination (CEE), 1990 v. Osiris Das (1992 (3) SCC 543) (supra). It relates to the G. B. Pant University, which is aided and financed by the Government of U. P. The Government of U. P. had issued a notification directing that admission of the students to the various Engineering Institutions in the State shall be made in order of merit and through a Combined Entrance Examination to be conducted by an Admission Committee. The G. B. Pant University made provisions for reserving 5% seats over and above the sanctioned strength of seats for sons and wards of the employees of the University for admission to the B. Tech. course. The State Government insisted that any such reservation was not justified and would be contrary to constitutional provisions. The University accepted the said directions issued by the State Government and decided to do away with the reservation. In writ petitions filed by the students who failed to qualify for admission in the general category of candidates and were claiming admission against the reserved quota, interim orders were passed by the Allahabad High Court for giving provisional admission. Setting aside the

said orders of the High Court, this Court has held :-

"There is no dispute that the G. B. Pant University is aided and financed by the State Government and the University is an instrumentality of the State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The reservation of seats for admission to the B. Tech. course in favour of the sons and wards of the employees of the University is violative of the doctrine of equality enshrined under Article 14 of the Constitution. There is no rationale for the reservation of the seats in favour of the sons and wards of the employees of the University nor any such reservation has any rational nexus with the object which is sought to be achieved by the University. The State Government, in our opinion, rightly insisted on the University to do away with the reservations in favour of the sons and wards of the employees." (pp. 545, 546)"

It is also well-settled that even constitutionally permissible reservation cannot go beyond 50% and it is the mandate of Article 14 that 50% of the seats are left open to general competition. Reference may be made to the observations of the Hon'ble Supreme Court in **M. R. Balaji v. State of Mysore**, AIR

1963 SC 649 (quoted in **State of UP v. Pradip Tandon**, AIR 1975 SC 563), as under:-

“28.....It has been held by this Court in Balaji's case 1963 Supp 1 SCR 438 = (AIR 1963 SC 649) (supra) that 50 per cent of the seats in educational institutions should be left open to general competition...”

Thus, the petitioner-institution cannot be allowed to claim that all the seats could be filled up exclusively for wards/dependants of Army personnel, ignoring other meritorious eligible candidates.

In view of above conclusion, we cannot allow the petition for a direction to fill up all the seats out of wards/dependants of Army personnel. Admissions to the petitioner-institute have to be on merits, open to all eligible candidates, to be regulated in accordance with law, including the directions contained in the judgment of the Hon'ble Supreme Court in **PA Inamdar** (supra).

The writ petition is dismissed subject to above observations.

(ADARSH KUMAR GOEL)
JUDGE

October 4 , 2007
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(AJAI LAMBA)
JUDGE

